

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)**

-----X		
I. In re:	:	Chapter 11
	:	
FREDERICKSBURG PARK, LLC,	:	No. 17-32287-KLP
	:	
Debtor.	:	
	:	
-----X		

**MOTION FOR ORDER APPROVING CONTRACT TO SELL REAL ESTATE AND
AUTHORIZING SALE OF CERTAIN REAL PROPERTY**

Fredericksburg Park, LLC (“Debtor”), the Debtor and Debtor-In-Possession herein, by counsel, pursuant to 11 U.S.C. §§363(b), respectfully requests entry of an Order approving the terms and conditions of that certain *Agreement of Purchase and Sale* (the “Contract”) by and between the Debtor, as seller, and Kettler Real Estate Acquisitions, LLC (“Purchaser”), as purchaser, providing for the sale of all of the right, title and interest of the Debtor in its real property more particularly described herein and authorizing the sale of said property to Purchaser, and in support thereof respectfully states as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to the provisions of 28 U.S.C. §§157 and 1334. This is a core proceeding pursuant to the provisions of 28 U.S.C. §157(b)(2)(N) and (O). Venue is proper in this District and Division pursuant to 28 U.S.C. §§1408 and 1409. The statutory predicate for the relief requested in this Motion is 11 U.S.C. §363(b).

Background

2. On May 2, 2017 (the “Petition Date”), the Debtor filed a voluntary petition commencing this case under Chapter 11 of the Bankruptcy Code. The Debtor has remained as Debtor in Possession since that time. No creditors committee, trustee or examiner has been

appointed. On August 30, 2017, this Court determined that this a single asset real estate case.

3. The Debtor's sole tangible assets consist of several contiguous or nearly contiguous parcels of effectively undeveloped real estate located in Fredericksburg, Virginia (the "Property").

Apart from a small real property tax liability, the secured debt on the Property consists of secured debt in favor of Telegraph Hill Investments, LLC and its related party David Horstick, in the total amount due of approximately \$4.1 million. The legal description for each parcel of the Property is attached hereto as Exhibit A.

4. As a result of arms length negotiations with Purchaser, the Debtor has entered into the *Contract*, whereby it has agreed to sell the Property to Purchaser. The total purchase price for the proposed sale is \$6,650,000 (the "Purchase Price"). There is no real estate agent's commission due on the sale. A true copy of the *Contract* is attached and incorporated by reference to this *Motion* as Exhibit B. The study period has now expired and the Contract is now final and binding, subject only to two contingencies related to utility easements that are expected to be satisfied prior to the closing date. There are no financing contingencies. Closing would take place not later than March 31, 2018, provided the Court enters an Order approving this proposed sale, or dismisses the bankruptcy case (the latter is the Debtor's preferred approach).

5. The sale of the Property to Purchaser will produce sufficient net proceeds to pay all creditors in full.

Relief Requested

6. By this *Motion*, the Debtor seeks approval of the terms and conditions of the *Contract*, including authority to convey the Property to Purchaser and to pay all secured debt on the Property at closing.

Argument

7. Section 363(b) of the Bankruptcy Code permits a trustee or debtor-in-possession to sell property of the estate other than in the ordinary course of business after notice and a hearing. 11 U.S.C. §363(b).

8. The bankruptcy court's power to authorize a sale under section 363(b) is an exercise of its discretion. *Committee of Equity Security Holders v. Lionel Corporation (In re Lionel Corporation)*, 722 F.2d 1063 (2d Cir. 1983). Factors to be considered in determining whether to approve a sale of assets under section 363(b) include: (i) whether a sound business reason exists for the proposed transaction, (ii) whether fair and reasonable consideration is being provided, (iii) whether the transaction has been proposed and negotiated in good faith, and (iv) whether adequate and reasonable notice has been provided. *See e.g., In re Ewell*, 958 F.2d 275 (9th Cir. 1992) (affirming sale where price was fair and reasonable and buyer was good faith purchaser).

a. In this case, the Debtor has a sound business reason for selling the Property to Purchaser. The Debtor has diligently and in good faith analyzed all other available options in connection with the use or disposition of the Property and determined that the terms and conditions set forth in the *Contract* with Purchaser, including the price at which Purchaser proposes to purchase the Property, are all fair and reasonable and together constitute the highest or otherwise best offer presently obtainable for the Property. The Debtor lacks the resources to develop the property itself, and has marketed the Property to several potential purchasers and investors, with this offer being the highest and best offer not subject to untenable contingencies, risks, expenses and delays.

b. The terms of sale with Purchaser were negotiated at arms length and in good faith. Purchaser is not an "insider" of the Debtor as that term is defined in 11 U.S.C. § 101(31).

c. Finally, adequate and reasonable notice is being provided to all creditors as set forth below.

9. Pursuant to the provisions of section 363(b) of the Bankruptcy Code, the Debtor proposes to convey the Property to Purchaser and to satisfy at closing all liens on the Property.

10. Notice of this sale will be provided to all creditors and parties in interest in this case in accordance with the requirements of Bankruptcy Rules 6004(a) and 2002(a)(2) and (c).

Conclusion

WHEREFORE, for the foregoing reasons, the Debtor respectfully requests that the Court enter an Order (a) approving all of the terms and conditions of the *Contract*, authorizing the conveyance of all of the Debtor's right, title and interest in and to the Property to Purchaser, (b) authorizing the disbursement from the proceeds of sale at closing to pay all liens and closing costs, including adjustment of real estate taxes to the date of settlement; and (c) providing such other and further relief as the Court deems just and proper.

Dated: March 5, 2018.

Respectfully submitted,

/s/Robert B. Goodall

Robert B. Goodall (VSB #13590)
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/s/ Daniel M. Press

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Counsel for Fredericksburg Park, LLC

CERTIFICATE OF SERVICE

This is to certify that on this 5th day of March, 2018, I caused the foregoing document to be served by CM/ECF upon the United States Trustee and all creditors requesting such notice, and by first class mail, postage prepaid, upon the creditors included on the attached matrix.

/s/ Daniel M. Press

Label Matrix for local noticing
0422-3

Case 17-32287-KLP

Eastern District of Virginia
Richmond

Mon Mar 5 15:51:26 EST 2018

Andrew S. Garrett
85 Mine Rd., Suite 115
Stafford, VA 22554-7590

Fredericksburg Park, LLC
P.O. Box 2648
Stafford, VA 22555-2648

Andrew S. Garrett, member loan
85 Mine Rd., Suite 115
Stafford, VA 22554-7590

United States Bankruptcy Court
701 East Broad Street
Richmond, VA 23219-1888

Beverley L. Crump,
Substitute Trustee
1111 East Main St., 16th, Fl
Richmond, VA 23219-3532

Bowman Consulting Group, Ltd
650A Nelms Circle
Fredericksburg, VA 22406-1117

Bruce E. Arkema, Esq.
111 East Main Street, 16th Fl.
Richmond, VA 23219-2111

Christian G. Waller
701 Cobblestone Blvd., Unit 30
Fredericksburg, VA 22401-6616

City of Fredericksburg, Virginia
Attn: Brenda A. Wood, Treasurer
P.O. Box 276
Fredericksburg, VA 22404-0276

Dan Gartner
8430 Hunters Creek Drive
Houston, TX 77024-3205

David D. Horstick
4121 Plank Road, #506
Fredericksburg, VA 22407-4888

David D. Horstick
c/o Bruce E. Arkema, Esq.
1111 E. Main St. 16 Flr
Richmond, VA 23219-3532

David D. Horstick
c/o Horstick Developments, Inc
PO Box 41190
Fredericksburg, VA 22404-1190

Davis Carter Scott
1676 International Dr.
Fifth Floor
Mc Lean, VA 22102-4898

Davis Carter Scott
8614 Westwood Center Dr. #800
Vienna, VA 22182-2264

DurretteCrump, PC
1111 East Main St., 16th FL.
Richmond, VA 23219-3532

Garrett Development Corp
85 Mine Rd., Suite 115
Stafford, VA 22554-7590

Hirschler Fleischer
725 Jackson St., #200
Fredericksburg, VA 22401-5761

(p)INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 7346
PHILADELPHIA PA 19101-7346

James R. Nalls
20376 Fallsway Terrace
Sterling, VA 20165-5161

Jerry Brown
14060 Aris Ct.
Woodbridge, VA 22193-3346

Kim Gartner
8430 Hunters Creek Drive
Houston, TX 77024-3205

MVB Bank
1000 Johnson Ave.
Bridgeport, WV 26330-1350

NVR, Inc.
3850 Fettler Park Dr.
Suite 201
Dumfries, VA 22025-2039

Nationwide Harleysville Ins Co
355 Maple Ave.
Harleysville, PA 19438-2297

(p)U S SECURITIES AND EXCHANGE COMMISSION
ATLANTA REG OFFICE AND REORG
950 E PACES FERRY RD NE STE 900
ATLANTA GA 30326-1382

Ox Investments, LLC
c/o The Garrett Companies
85 Mine Road, Suite 115
Stafford, VA 22554-7590

Phillip King
1011 Albert Rennolds Drive
Fredericksburg, VA 22401-4461

Ramsey Masonry Company, Inc.
28 Potomac Creek Dr.
Fredericksburg, VA 22405-4541

Robert B. Van Arsdale, Asst US
Trustee US Courthouse
701 E. Broad St., Ste. 4304
Richmond, VA 23219-1885

Scott J. and Ann E. Thomas
5316 Pocahontas Street
Bellaire, TX 77401-4823

Shanks Towing
3616 Summit Crossing Rd.
Fredericksburg, VA 22408-0458

Taurean Investments, LLC
Atten: Jason Sherman
4020 N. Randolph Street
Arlington, VA 22207-4812

Telegraph Hill Investments, LL
c/o Bruce E. Arkema, Esq.
1111 E. Main St. 16 flr
Richmond, VA 23219-3532

Telegraph Hill Investments, LL
c/o Horstick Development, Inc.
P.O. Box 41190
Fredericksburg, VA 22404-1190

Telegraph Hill Investments, LL
c/o Horstick Developments, Inc
PO Box 41190
Fredericksburg, VA 22404-1190

Treasurer, City of Fredericksb
PO Box 267
Fredericksburg, VA 22404-0267

Daniel M. Press
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6718 Whittier Ave., Suite 200
McLean, VA 22101-4531

Judy A. Robbins
Office of the U.S. Trustee - Region 4 -R
701 E. Broad Street, Suite 4304
Richmond, VA 23219-1849

Robert B. Goodall
Goodall, Pelt & Carper, P.C.
1259 Courthouse Road, Suite 101
Stafford, VA 22554-7124

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

IRS
400 N. 8th St., Box 76
Stop Room 898
Richmond, VA 23219

Office of Reorganization
SEC
3475 Lenox Road, NE, Ste. 1002
Atlanta, GA 30326-7625

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Telegraph Hill Investments, LLC

(d)Andrew S. Garrett, Inc.
85 Mine Road, Suite 115
Stafford, VA 22554-7590

(d)Garrett Development Corp.
85 Mine Rd., Suite 115
Stafford, VA 22554-7590

(d)Andrew S Garrett
85 Mine Rd. Suite 115
Stafford, VA 22554-7590

(u)David Horstick

End of Label Matrix
Mailable recipients 40
Bypassed recipients 5
Total 45